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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND
POWER DISTRICT, IN CONFORMANCE
WITH THE REQUIREMENTS OF ARIZONA
REVISED STATUTES, SECTION 40-360 et
seq., FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY
AUTHORIZING THE EXPANSION OF THE
COOLIDGE GENERATING STATION, ALL
WITHIN THE CITY OF COOLIDGE, PINAL
COUNTY, ARIZONA.

Docket No. L-00000B-21-0393-00197

**RANDOLPH INTERVENORS REPLY TO
SRP RESPONSE TO REQUEST FOR
SUPPLEMENTAL STATEMENT**

Pursuant to the request of Commissioner O'Connor on March 28, 2022, Randolph
Intervenors file this reply to the SRP response filed on April 6, 2022.

Randolph Intervenors remain steadfast in their position that the expansion plant should
not be build. SRP purchased the existing plant in 2019 from Transcanada. They had years to
take action to ameliorate the harms in Randolph. They did not do it. As outlined in the
intervenors brief, SRP described at the hearing the work they did with the communities they
impact except Randolph. What they have agreed to do for Randolph under oath in the line-siting
hearing is a small part of what is already owed to the community.

To expand the plant to more than double the size will bring more harm to the community.
This harm is not just immediate but transcends generations. The intervenors seek to protect their

RANDOLPH INTERVENORS REPLY TO SRP RESPONSE TO REQUEST FOR SUPPLEMENTAL
STATEMENT - 1

1 lives, their lifestyle, and their community not just for themselves but for their children and
2 grandchildren. That is why the community overwhelmingly remains steadfast, as evidenced in
3 the transcript and outlined in the brief, that the plant should not be built.

4 According to the World Health Organization (WHO), 24% of all global deaths, roughly
5 13.7 million deaths a year, are linked to the environment, due to risks such as air pollution and
6 chemical exposure. Based on such facts, the United Nations Human Rights Council formally
7 recognized a clean and safe environment as a human right when they passed UN Resolution
8 48/13. More than 1,300 civil society organizations advocated for the resolution and 15 UN
9 agencies released a declaration endorsing it along with 50 UN Human Rights Council Special
10 Rapporteurs, more than 50 businesses, more than 100,000 children, the UN High Commissioner
11 for Human Rights, and the Global Alliance of National Human Rights Institutions.

13 The resolution A/HRC/RES/48/13 makes it clear that there is a human right to a clean,
14 healthy, and sustainable environment. More than 155 States have recognized some form of a
15 right to a healthy environment in, *inter alia*, international agreements or their national
16 constitutions, legislation, or policies. Government agencies are asked to adopt policies for the
17 enjoyment of the right to a clean, healthy, and sustainable environment as appropriate, including
18 with respect to biodiversity and ecosystems and to consider human rights obligations and
19 commitments relating to the enjoyment of a clean, healthy, and sustainable environment.

21 The resolution is in line with *Juliana v. United States*, 98 F.3d 1295 (2021) in which 21
22 youth plaintiffs sued the federal government in 2015 for its inaction related to climate change.
23 The case was based on the theory of “public trust” i.e. the government has an obligation to
24 protect the public trust in its health, environment, and future. The Ninth Circuit Court, that
25 covers Arizona, ruled that while the federal government had indeed violated plaintiffs’ rights to

1 life, liberty, and property through inaction related to climate change, the court was not
2 responsible for addressing the remedies requested by the plaintiffs. The plaintiffs filed an
3 amended complaint and were ordered to on-going settlement discussions.

4 The American Bar Association (ABA) supports Resolution 48/13 and sent a letter to the
5 Chair of the President's Council on Environmental Quality. The ABA had earlier adopted its
6 own resolution:

7
8 RESOLVED, That the American Bar Association advance environmental justice
9 principles and considerations in its programs, policies, and activities, including
10 advocating for legislation and policy, and work with all levels of government to establish
11 environmental justice laws, regulations, guidelines, policies, and best practices that
12 reflect the right of every human being to dignity and a clean and healthy environment;
13 and,

14 FURTHER RESOLVED, That the American Bar Association urges law firms, corporate
15 and nonprofit legal departments, lawyers, law schools, and state, local, territorial, tribal,
16 and specialty bar associations to include and consider the perspectives and communities
17 of color, indigenous communities, low-income communities, and other vulnerable
18 populations and people as stakeholders in environmental justice decision-making and
19 implementation.

20 States and state agencies such as the Corporation Commission must make decisions with
21 the concerns of communities of color in mind because *inter alia* states are not normal litigants.

22 As Justice Holmes explained in *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237, 27 S.Ct.

23 618, 51 L.Ed. 1038 (1907), a state has an interest in the health and safety of its own residents.

24 States have a right and in fact an obligation to protect its citizens from harm, and the harms
25 associated with climate change are serious and well recognized. *Massachusetts v. EPA*, 549 U.S.

497, 521, 127 S. Ct. 1438, 67 L. Ed 2d 248 (2007)

In *American Electric Power Company, Inc., v. Connecticut*, 564 U.S. 410, 131 S. Ct.

2527, 180 L. Ed 2d 435 (2011) the states sued on nuisance to prevent harm to residents. The

RANDOLPH INTERVENORS REPLY TO SRP RESPONSE TO REQUEST FOR SUPPLEMENTAL
STATEMENT - 3

1 court ruled against them because EPA and thus NEPA applied and preempted the state law.

2 Here, it does not. Therefore, Arizona nuisance law would be applicable. The law states in A.R.S.

3 §13-2917:

4
5 A. It is a public nuisance, and is no less a nuisance because the extent of the annoyance
6 or damage inflicted is unequal, for anything: 1. To be injurious to health, indecent,
7 offensive to the senses or an obstruction to the free use of property that interferes with
the comfortable enjoyment of life or property by an entire community or
neighborhood or by a considerable number of persons.

8 The Randolph Intervenors ask you to respect their human right to a clean, healthy, and
9 sustainable environment and prevent the obstruction to the free use of their property that
10 interferes with the entire community. Since the applicant did not analyze and present evidence
11 for each of the statutory requirements as outlined in the intervenors brief, and each word of the
12 statute must be complied with (*FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133,
13 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000) cited in *Utility Air Regulatory Group v. EPA*, 573 U.S.
14 302, 134 S. Ct. 2427, 189 L. Ed. 2d 372 (2014)) and in this case was not, the CEC must be
15 rejected.
16

17
18 If the Arizona Corporation Commission grants the CEC despite the failure to analyze all
19 statutory factors and properly balance the harms, the Randolph Intervenors believe that
20 substantial amelioration measures must be taken.

21 The following conditions should be added to the CEC in addition to those in the line-
22 sitting committee decision filed February 23, 2022 and discussed by applicant in their response:
23

24 1. Noise pollution shall be mitigated by limiting construction to the hours of 6 a.m. to 10
25 p.m. While understanding that the invasion of Ukraine might cause supply chain
issues, residents still need to sleep.

2. The community center in which Randolph residents desire to center the economic development activities that SRP has already agreed to is not intended to be a county facility contrary to SRP (SRP Page 8, Line 12). It is intended to be the center of revitalization of the community with community ownership and leadership. It should be centrally located in Randolph and constructed by SRP to include a versatile gym, full kitchen facility, and a business center with a stable internet connection for residents' use. What other services may be in the building are up to the community to organize.
3. In coordination with Pinal County, SRP shall contribute financially to refurbish the children's park including campground, playground, and basketball court.
4. SRPs offer of \$25,000 per year for five years to the Pinal County Owner-Occupied Rehabilitation Program (SRP Page 7, Line 8 & 18) is very minimal considering what weatherization costs. One home a year would probably consume that amount. An additional condition should be making a donation to CAHRA (SRP Page 7, Line 20) that would be limited to Randolph residents in an appropriate amount certain.
5. It should be clarified that the \$270,000 allocated for the historical designations (SRP Page 5, Line 25) includes restoration of historic buildings as required.
6. The scholarship program should include descendants and adults who want to re-career (SRP Page 6, Line 14-15) because the historical abuse of Randolph has resulted in the destruction of that thriving community so that the children had to leave to find jobs elsewhere. Educating those descendants in careers and skills that would allow them to return to Randolph to work or start new businesses would lead to the revitalization of the community.

1 RESPECTFULLY SUBMITTED THIS April 7, 2022.

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3 By 
4 Dianne Post (006141)
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6

7 ORIGINAL and 13 copies of the foregoing
8 filed this 7 of April 2022 with:

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13 COPIES of the foregoing e-mailed on this
14 7 April 2022, to:

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RANDOLPH INTERVENORS REPLY TO SRP RESPONSE TO REQUEST FOR SUPPLEMENTAL
STATEMENT - 6

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